BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

QUAN MINH BUI Claimant	}
VS.	Docket No. 184,517
MONFORT, INC. Respondent	Docket No. 164,517
AND	{
OLD REPUBLIC INSURANCE COMPANY Insurance Carrier	}

ORDER

Respondent appeals from an Order entered by Special Administrative Law Judge William F. Morrissey on January 2, 1996, wherein the Special Administrative Law Judge refused to dismiss the claimant's claim pursuant to K.S.A. 44-518.

ISSUES

(1) Whether the Special Administrative Law Judge abused his jurisdiction by refusing to dismiss the claimant's claim pursuant to K.S.A. 44-518 as claimant has refused to submit to a medical examination pursuant to the Order of the Administrative Law Judge.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board find as follows:

K.S.A. 44-551 grants appeal from preliminary hearings if it is alleged the administrative law judge has exceeded his or her jurisdiction in granting or denying benefits. K.S.A. 44-534a lists the following as being jurisdictional issues to be considered upon appeal from preliminary hearings: (1) whether the employee suffered an accidental injury; (2) whether the injury arose out of and in the course of the employee's employment; (3) whether notice is given or claim timely made; (4) whether certain defenses apply. Absent the involvement of one of the above listed issues or a showing that the administrative law judge exceeded his or her jurisdiction in granting or denying the relief requested at the preliminary hearing, the Appeals Board does not have jurisdiction to consider a matter on an appeal from a preliminary hearing.

In this instance, claimant failed to appear at several scheduled medical examinations and respondent has requested a dismissal of this matter pursuant to K.S.A. 44-518. The Special Administrative Law Judge, in his Order, indicated he could find no provision in the statute granting a prejudicial dismissal of claimant's claim. While K.S.A. 44-518 does discuss dismissal of a proceeding it does not specifically discuss a prejudicial dismissal of a claim. The Special Administrative Law Judge has the right to grant or deny the above requested action. The issue contained herein is not listed in K.S.A. 44-534a and it has not been shown that the Special Administrative Law Judge exceeded his jurisdiction in denying respondent's motion. As such, the Appeals Board does not have jurisdiction over this interlocutory matter.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Special Administrative Law Judge William F. Morrissey dated January 2, 1996, remains in full force and effect.

IT IS SO ORDERED.
Dated this day of February 1996.
BOARD MEMBER
BOARD MEMBER
BOARD MEMBER
BOARD MEMBER
BOARD MEMBER

c: Seth G. Valerius, Topeka, Kansas Terry J. Malone, Dodge City, Kansas William F. Morrissey, Special Administrative Law Judge Philip S. Harness, Director